

REMARKS

Claims 1 – 47 are pending and were addressed in the Office Action, claims 1 and 21 being the sole independent claims. Claims 3, 9, 11, 13 – 15, 19, 23, 29, 45, and 39 are canceled without prejudice. Non-limiting amendments are entered herewith in claims 2, 4, 6, 7, 8, 10, 12, 16, 18, 21, 22, 26, 27, 30 – 33, 36, and 42 without prejudice, to correct typographical errors, delete extraneous text, conform the claim language to antecedent support in prior claims, etc.

New claims 48/1, 49/21, 50/1, 51/21, 52 and 53/52 – 63/52 are added. Claims 48, 49 and 62 find support in the specification at page 13, lines. 7 – 10. Claims 50, 51 and 63 find support in the specification at page 9, ll. 13-18. Claim 52 is supported by Fig. 1 and Fig. 2 and the text referring thereto. Claims 53 – 61 correspond to, and are supported by, previously presented claims 2, 5, 7, 8, 12, 16, 17, 18, and 20.

Reconsideration and allowance of claims 1, 2, 4 – 8, 10, 12, 16 – 18, 20 – 22, 24 – 28, 30 – 38, and 40 – 63 is respectfully requested in light of the above amendments and the following remarks.

Claims 1 – 20, 43, 44 and 47 were rejected under 35 U.S.C. § 101 as allegedly being drawn to nonstatutory method, the Examiner asserting that the claimed method fails to meet the machine or transformation test.

In response, claim 1, from which the other rejected claims depend, has been amended to tie the claimed method to computer systems by reciting that the method is carried out over the internet and includes inputting and outputting data therefrom, thus tying the method to a machine, i.e., the use of computers etc. Support for this amendment is provided at pages 14 – 18 of the application as filed, from which one of ordinary skill in the art would understand that the described internet website application is designed to handle data as described therein. By reciting the method as being internet based and including steps such as outputting data, the claim clearly defines statutory subject matter. See, e.g., *Ex parte Dickerson, Jr.*, BPAI appeal 2009-001172 (July 9, 2009)(non-precedential) (claims to a computerized method which included a step of outputting information from a computer were deemed tied to a particular machine or

apparatus and were therefore patent eligible under 35 U.S.C. §101.) In addition, it is respectfully submitted that the process of claim 1 "transforms a particular article to a different state" pursuant to *In re Bilski*, 544 F.3d 943, 88 USPQ2d 1385 (Fed. Cir. 2008) because in the process of claim 1, an internet website and its associated database undergoes a transformation by virtue of steps such as inputting a selection of a performance indicator and a minimum level of performance. It is respectfully submitted that the website constitutes a "particular article" within the meaning of *In re Bilski*. Withdrawal of the stated rejection is therefore respectfully requested.

Claims 1 – 5, 14, 15, 20 – 25, 32, 35 and 40 have been rejected under 35 U.S.C. §102 as allegedly being anticipated by Eicher (U.S. Patent Application Publication no. 2002/0099598 of Eicher, Jr., et al.).

Claim 1 has been amended to provide a patentable distinction relative to Eicher, i.e., to provide that the method includes imposing financial incentives as previously recited in claim 6 (new canceled). The Office Action acknowledges (e.g., in the rejection of claim 6 under 35 U.S.C. § 103) that Eicher lacks a disclosure of a financial incentive. Claim 21 has been amended in a similar manner. Support for these amendments is found throughout the application as filed, e.g., in the first paragraph of the Detailed Description, p 9 – 10.

Since all of the pending claims depend from claim 1 or claim 21, the present amendments render moot the stated ground of rejection. The identified claims are therefore believed to be allowable. Withdrawal of the stated rejection is therefore respectfully requested.

Claims 6 – 8, 13, 26 – 28, 33 and 41 have been rejected under 35 U.S.C. §103 as allegedly being obvious over Eicher in view of Ariff (U.S. Patent Application Publication no. 2002/0188509) (erroneously cited in the Office Action as 2003/0187802). Ariff is cited to provide a teaching of a consequence of a selected incentive being a favorable financial reward, which is admittedly not found in Eicher.

However, the foregoing amendments to claim 1 and claim 21, from which claims 9 – 11 and 29 – 31 all depend, render moot the rejection of claims on this basis because the Office Action does not articulate how the asserted combination shows or suggests the features added to claims 1 and 21.

In addition, claim 6 defines a method wherein the consequence for a selected incentive is a financial reward favorable to the at least one participating partner. In the Office action, it is acknowledged with regard to claim 6 that Eicher nowhere discloses or suggests a method or system wherein a consequence for a selected incentive is a financial reward favorable to a participating partner, and it is asserted that Ariff shows this feature and that it would be obvious to one of ordinary skill in the art to combine this teaching of Ariff with Eicher.

The stated ground of rejection is respectfully traversed on the ground that one of ordinary skill in the art, faced with Eicher, would not look to Ariff for applicable incentives because the system described by Ariff is not analogous to the Applicant's invention or to Eicher, which are both directed to supply communities, and Ariff does not address relationships similar to those in supply communities. Eicher, in particular, is directed toward supply chain management wherein parties are looking to enter into contracts with other parties. The users or participants in Eicher's system are known to be business persons often with a professional specialization at acquiring the specific services needed by them or their employers via negotiations leading to contract formation. In contrast, Ariff's system is directed at developing retail consumer loyalty. Retail consumer behavior is known to be completely different from professional business practice and is not pertinent to a supply community. In addition, retail consumer behavior of the kind addressed by Ariff is not contract-driven retail transactions but rather point of sale type purchases, which are the most common type of retail consumer purchasing activity and which are not made via negotiated contracts. Moreover, not only is Ariff's disclosure not within the field of the Applicant's endeavor, it is not reasonably pertinent to the problem that the Applicant was attempting to solve, i.e., to provide a system in which an establishing partner can create incentives to change the quality of performance of other participating partner s by tracking performance indicators.

Since Eicher and Ariff describe systems for use by very different kinds of participants whose commercial transactions within the respective systems are fundamentally different, and since Ariff is not analogous to the Applicant's invention, one of ordinary skill in the art would not consider it obvious to combine the teachings of Eicher and Ariff as is done in the Office Action in relation to claim 6. Accordingly, withdrawal of the stated rejection is therefore respectfully requested with respect to claim 6, 8/6 and 16/6, 17/16/6 and 18/16/6.

Claim 7 defines a system wherein consequences for a selected incentive includes financial penalty unfavorable to the at least one participating partner when the minimum required level of performance is not achieved. Not only does Eicher admittedly fail to disclose financial rewards and financial penalties, for which Ariff is cited, Ariff does not constitute analogous art and, in any case, the teachings of Eicher and Ariff are not properly combinable, for reasons stated above in relation to claim 6. Moreover, even if Eicher could properly be read together with Ariff, Ariff only discloses positive incentives for retail consumers, i.e., financial rewards. The Office Action cites Ariff paragraph 0075 in particular as supporting the rejection of claim 7, but nowhere in paragraph 0075 or elsewhere in Ariff is a financial penalty imposed on either party. Therefore, claim 7 and 8/7 are patentable over Eicher and Ariff for the same reason as claim 6 and further neither Eicher nor Ariff disclose or suggest imposing financial penalties on an participating partner.

Claim 13 is canceled, without prejudice.

Claims 26 – 28 correspond to claims 6 – 8 and are allowable for the same reasons that claims 6 – 8 are allowable.

Claims 33 and 41 are allowable at least because they depend from claim 21, which is allowable for reasons given above. Withdrawal of the stated rejection is therefore respectfully requested.

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Claims 9 – 11 and 29 – 31 have been rejected under 35 U.S.C. §103 as allegedly being obvious over Eicher in view of D'Antoni (U.S. Patent Application Publication no. 2003/0139996 of D'Antoni et al.). However, the foregoing amendments to claim 1 and claim 21, from which claims 9 – 11 and 29 – 31 all depend, render moot the rejection of claims on this basis because the Office Action does not articulate how the asserted combination shows or suggests the features added to claims 1 and 21. Also, it should be noted that claims 9, 11 and 29 are canceled and the remaining rejected claims all address financial incentives rather than an option to participate, rendering these claims allowable for reasons state above (see, e.g., the discussion of claim 1).

In any event, it is noted that the option of a community member to participate or not participate is not shown in D'Antoni paragraph 0017 as asserted in the Office Action. Rather, this paragraph describes the option of the facilitating partner to give a portion of sales commissions to Business Partner for each product sold to Business Partner Customers. However, this option pertains to Business Partners who are already participants in the system; D'Antoni does not disclose that the Business Partners have an option not to participate. Therefore, the rejected claims include a feature nowhere disclosed or suggested by the applied references.

Withdrawal of the stated rejection is therefore respectfully requested.

Claims 16 and 36 have been rejected under 35 U.S.C. §103 as allegedly being obvious over Eicher in view of Marshall (U.S. Patent Application Publication no. 2002/0116266). However, the foregoing amendments to claim 1 and claim 21, from which claims 16 and 36 depend, render moot the rejection of claims on this basis because the Office Action does not articulate how the asserted combination shows or suggests the features added to claims 1 and 21.

In addition, claims 16 and 36 define a feature nowhere disclosed or suggested by Eicher or Marshall: the increasing of a favorable reward or reduction of the minimum required level of performance for a selected incentive program during the time or count incentive program duration period for that incentive. This provides the users of Applicant's method and system

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with a degree of flexibility not contemplated by Eicher or Marshall. It is noted that the option to change a reward or required performance level is not shown in Marshall paragraph 0057 as asserted in the Office Action. Rather, this paragraph describes different ways of enticing customers to spend time and gain time points in specific locations under existing promotion rules. Therefore, the rejected claims include a feature nowhere disclosed or suggested by the applied references.

Withdrawal of the stated rejection is therefore respectfully requested.

Claims 17 – 19, 37 – 39, 42 and 47 have been rejected under 35 U.S.C. §103 as allegedly being obvious over Eicher in view of Magowan (U.S. Patent Application Publication no. 2005/0144075 of Magowan et al.). However, the foregoing amendments to claim 1 and claim 21, from which claims 17 – 19, 37 – 39, 42 and 47 all depend, render moot the rejection of claims on this basis because the Office Action does not articulate how the asserted combination shows or suggests the features added to claims 1 and 21.

Furthermore, claims 17 and 18 depend from claim 16, which is allowable for reasons stated above. Likewise, claims 37 and 38 depend from claim 36, which is allowable for reasons stated above.

In addition, it is noted that the Office Action relies specifically on Magowan's paragraph 0091, but this paragraph does not address changing the time or count measurement period in general or at anytime provided that the time or count measurement is not longer than the time or count incentive program duration period, as asserted in the Office Action. Rather, paragraph 0091 simply describes a way of tracking and managing promotion events and there is no discussion of setting a time or count measurement period within a promotion event. Therefore, the rejected claims include a feature nowhere disclosed or suggested by the applied references.

Withdrawal of the stated rejection is therefore respectfully requested.

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Claims 43 – 46 have been rejected under 35 U.S.C. §103 as allegedly being obvious over Eicher in view of Shaya (U.S. Patent Application Publication no. 2002/0161664 of Shaya et al.). However, the foregoing amendments to claim 1 and claim 21, from which claims 43 – 46 all depend, render moot the rejection of claims on this basis because the Office Action does not articulate how the asserted combination shows or suggests the features added to claims 1 and 21.

In addition, the Office Action specifically cites Shaya's paragraph 0190 as showing that an establishing partner and a participating partner may be within the same corporate entity, but this paragraph does not disclose one partner within corporate entity imposing financial penalties or rewards on another partner in the same entity. Therefore, the rejected claims include a feature nowhere disclosed or suggested by the applied references.

Withdrawal of the stated rejection is therefore respectfully requested.

New Claims

Claims 48, 49 and 62 are allowable because they depend from allowable base claims. In addition, each of these claims are directed to a transportation marketplace, and the prior art references Ariff is directed to a completely different commercial environment, as discussed above.

Claims 50, 51 and 63 are allowable because they depend from allowable base claims. In addition, each of these claims are directed to a system and methods wherein the at least one performance indicator measures performance of the participating party in providing service to third parties. None of the cited prior art reference offers any teaching or suggestion relative to providing incentives to a second party to affect that party's performance to a third party.

Claim 52 is allowable at least because, like claim 1, it is directed to a method which provides financial incentives.

Claims 53 – 61 correspond to, and are supported by, previously presented claims 2, 5, 7, 8, 12, 16, 17, 18, and 20, and are allowable for the same reasons that those claims are allowable.

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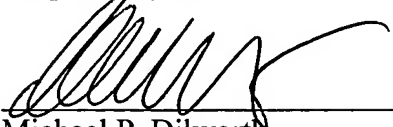
Each stated ground of rejection has been addressed or traversed, and re-examination and reconsideration of the application is now respectfully requested.

Applicant believes that no fees are due with the submission of this Amendment and Reply. However, if a fee is due, Applicant authorizes the payment of any additional charges that may be necessary to maintain the pendency of the present application to the undersigned attorney's Deposit Account No. 50-4380.

The Examiner is invited to contact the undersigned should the Examiner deem it advantageous to further advance prosecution of this application.

15 April 2010
Date

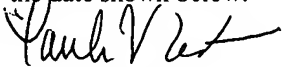
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I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:



Paula V. Testani
Dated: April 15, 2010